

BEFORE THE  
OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

**FILED**

SEP 09 2014

**OSTEOPATHIC MEDICAL BOARD  
OF CALIFORNIA**

In the Matter of the Petition for Termination  
of Probation of:

PO LONG LEW, D.O.,

Petitioner.

Case No. 00-2006-001753

OAH No. 2014061060

**DECISION**

The Osteopathic Medical Board of California heard this matter on August 7, 2014, in Vallejo, California. Board members present and participating were Joseph A. Zammuto, D.O., President; Keith Higginbotham; Michael Feinstein, D.O.; Alan Howard; Cheryl Williams; Claudia L. Mercado; David Connett, D.O.; and James M. Lally, D.O. Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, presided.

Deputy Attorney General Tessa Heunis represented the Office of the Attorney General.

Albert J. Garcia, Attorney at Law, represented petitioner Po Long Lew, D.O., who was present.

The matter was submitted for decision on August 7, 2014.

**FACTUAL FINDINGS**

1. On July 1, 1987, the Osteopathic Medical Board of California issued osteopathic physician's and surgeon's certificate no. 20A 5380 to petitioner Po Long Lew, D.O.

2. Effective January 5, 2011, pursuant to a stipulated settlement, the board revoked petitioner's license, but stayed the revocation and placed petitioner on probation for five years. Conditions of probation include payment of \$20,000 in cost recovery and completion of the Physician Enhancement Program (PEP) offered by the Physician Assessment and Clinical Education (PACE) program. Petitioner's probation will end January 5, 2016.

3. Petitioner was previously on probation from December 19, 2001, to December 19, 2006. Conditions of that probation included completion of the PACE program, and completion of an approved medical record keeping course and an approved professional ethics course.

4. The charges underlying petitioner's current probation involve his treatment of 14 patients between 2004 and 2006 (when he was on probation) and multiple allegations of gross negligence, repeated negligent acts, incompetence, excessive treatment, and failure to maintain adequate and accurate medical records.

5. Petitioner filed with the board a petition for termination of probation dated March 19, 2014. This is his third petition seeking early termination of probation. His first petition, dated November 11, 2011, was heard by the board on January 5, 2012, and denied effective March 20, 2012. Petitioner's second petition was denied on January 9, 2013, without a hearing, because two years had not elapsed since the decision on the prior petition.

6. Petitioner is in compliance with the terms and conditions of probation. He paid the full amount of cost recovery within the first year of probation. (Full payment of costs was a prerequisite to applying for early termination of probation.) Petitioner enrolled in PEP in November 2009, before he began probation, and he successfully completed the program in February 2013.<sup>1</sup> PACE program director William A. Norcross, M.D., wrote the following letter dated February 19, 2013:

This letter is to provide you with information regarding Dr. Po Long Lew who has been monitored in the UC San Diego PACE Physician Enhancement Program (PEP) for over three years. During this period of monitoring, Dr. Lew's clinical performance and attitude has been excellent. During most of this time, Dr. Lew has been carefully monitored by one of our toughest and most outstanding Faculty Mentors, Dr. Allison Ross. Her reports and those of our PEP Director, Mr. Nate Floyd, reflect nothing but a consistently very good to excellent performance. His chart notes, particularly, have progressed to become uniformly high quality. His attitude and demeanor through all of this have been superlative. He is clearly motivated to be the best physician he can be.

... [A]fter three years of close scrutiny, ... Dr. Lew has consistently demonstrated himself to be not only safe to practice, but a solid physician in all respects.

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<sup>1</sup> Petitioner contends that, in effect, he has been on probation since he enrolled in PEP, now almost five years ago.

We believe that he has clearly shown his quality as a physician and that further participation in our PEP Program is unlikely to contribute further to his remediation. Therefore, after careful consideration with the appropriate PACE faculty and staff, we recommend that his period of monitoring through our PEP Program be viewed as successfully completed.

7. In petitioner's view, the charges for which he is on probation were primarily caused by poor record keeping. In his written statement submitted with his petition, he stated: "The present case is based upon incidents that occurred during my prior probation and are the result of my continuing failure to prepare and maintain adequate patient records." Petitioner also stated that it was alleged that "my records for 14 Medi-Cal patients were grossly inadequate and thereby it was difficult to determine whether the services and treatment provided by me were reasonable and necessary." The investigation by the Department of Health Care Services (DHCS) which brought these deficiencies to light caused petitioner to revamp his record keeping practices and switch to electronic record keeping. He stated: "Because I corrected all of my record keeping deficiencies, [DHCS] lifted all restrictions on my Medi-Cal billing and took no action against me or my provider number."

8. Petitioner asserted in his written statement: "It has been eight (8) years since my last patient medical record was found to be inaccurate or inadequate. In addition, I participated in the PEP program which reviewed my records on a monthly basis. I only received positive reports." However, petitioner's PEP monitor found that two of the seven progress notes reviewed from November 2009 were below standard. Petitioner does not recall receiving this PEP report, but he readily acknowledges that he learned a lot from his participation in PEP.

9. At the hearing petitioner was questioned by the deputy attorney general and board members about allegations of poor medical judgment and substandard care in the case that led to his probation. While conceding that the case involved more than just poor record keeping, petitioner does not seem to acknowledge any deficiencies beyond illegible handwriting and inadequate documentation.

10. Petitioner's probation has caused him to be terminated as a provider for several health insurance companies and for the Los Angeles County Child Health and Disability Prevention Program. Consequently, he has lost many patients and his practice has suffered financially. Most of petitioner's patients do not speak English (he speaks Chinese and Vietnamese), and they often cannot find another doctor.

11. Petitioner submitted several letters and certificates of appreciation from community organizations providing services to Chinese-speaking senior citizens. Petitioner has lectured on hypertension, osteoporosis, diabetes and hypercholesterolemia, and he has provided free health services, such as blood pressure screening and health and nutritional counseling. Although the letters and certificates are from 2011 and 2012, petitioner

continued to provide community service in 2013 and 2014. In a letter dated July 23, 2014, Georgiana Szeto, Executive Secretary of the American Chinese Women Federation, stated that petitioner has been their medical consultant and provided free health care services and lectures.

12. Petitioner submitted four letters of recommendation from physicians. Irvin Benowitz, D.O., wrote a letter dated January 30, 2014, which contains some, if not all, of the same language as a letter he wrote on October 11, 2011, which petitioner submitted with his first petition for termination of probation. Dr. Benowitz commended petitioner as an excellent and competent physician and recommended that his probation be terminated. James Corey Sparks, the board's lead enforcement analyst, was unable to reach Dr. Benowitz to verify the authenticity of this letter, but he previously talked to Dr. Benowitz and verified the authenticity of his October 11, 2011, letter.

Michael Tan, D.O., wrote a letter dated February 5, 2014, which contains at least some of the same language as a letter he wrote on October 15, 2011, which petitioner submitted with his first petition for termination of probation. Dr. Tan described petitioner as "a valuable and compassionate physician" and "an asset to the medical field." Sparks did reach Dr. Tan to verify the authenticity of this letter.

Philip Lee, D.O., wrote a letter dated February 19, 2014, which is similar to a letter he wrote on October 4, 2011, which petitioner submitted with his first petition for termination of probation. Dr. Lee wrote:

[Petitioner] is a distinguished physician and surgeon who is extremely well known for his dedications [*sic*] to providing high standard of care in the communities he serves. He was on staff at St. Joseph Medical Center and Thompson Memorial, but due to his probation status his privileges were terminated and he was unable to continue treating patients at these facilities. However, I will recommend [petitioner] back to St. Joseph Medical Center to serve the hospitalized patients, as needed, in the Burbank community.

Sparks was unable to reach Dr. Lee to verify the authenticity of this letter, but he previously talked to Dr. Lee and verified the authenticity of his October 4, 2011, letter.

Asif Mahmood, M.D., wrote a letter dated November 2, 2012, in which he stated that he had "a long professional association and experience" with petitioner and found him to be a "very caring and ethical physician." Sparks was unable to reach Dr. Mahmood to verify the authenticity of this letter. Petitioner asserts that he told Dr. Mahmood that he was on probation and that this letter was to recommend termination of probation.

13. Petitioner submitted two letters from long-time patients, one dated December 3, 2011, and the other dated November 2, 2012, expressing their confidence and trust in him as an excellent doctor.

14. Petitioner is a member of the American Osteopathic Association (AOA). He submitted an AOA summary of his continuing medical education (CME) for 2010 to 2012 showing that he completed 257 hours of CME during this three-year period. Petitioner asserts that he completed some CME courses in 2013, although he did not submit the documentation, and that he is current with CME requirements.

15. Petitioner co-authored two peer-reviewed articles on a comparison of dietary patterns and nutrient intakes between Korean-American college students and their parents. These articles were published in the College Student Journal, one in 2010 and the other in 2012.

16. The board's decision denying petitioner's first petition for termination of probation, following the hearing on January 5, 2012, contains the following findings:

Petitioner's statement and testimony were remarkable for his lack of acknowledgement as to the nature and extent of the conduct that led to his most recent discipline.

[¶] . . . [¶]

It is also a concern of the Board that petitioner has not accepted responsibility for the deficiencies which led to his discipline. He continues to attribute the prior disciplines to "sloppy handwriting," and believes he has solved the problem by using a computer program to assist in charting. Indeed, he seemed perplexed that the Board continues to have concerns, now that he uses the charting program and no longer refers patients for in-house DXA scans. The multiple instances of sub-standard care alleged in the Accusation occurred during petitioner's first probationary term, while petitioner was in the PACE program or shortly after he completed the program. Accordingly, it is even more critical that petitioner demonstrate sustained performance within the standard of care over a prolonged period of time in order to assure the Board that he is safe to practice.

Although petitioner has successfully completed PEP since his first petition, he has not demonstrated any new understanding or insight into the allegations involving poor medical judgment and substandard care in the case that led to his probation.

## LEGAL CONCLUSIONS

1. Since the denial of his previous petitions for termination of probation petitioner has completed PEP with a very positive assessment from Dr. Norcross. However, petitioner still does not acknowledge or appear to understand the serious deficiencies that led to his license discipline, and such acknowledgement and understanding are essential elements of rehabilitation. The purpose of probation is not to punish the licensee but to protect the public. In this case, termination of petitioner's probation would be inconsistent with protection of the public.

2. Petitioner has not established cause for early termination of his probation.

## ORDER

The petition of Po Long Lew, D.O., for termination of probation is denied.

DATED: \_\_\_\_\_

9/3/2014

*Kyle Higginbotham, Vice President, for*  
JOSEPH A. ZAMMUTO  
President  
Osteopathic Medical Board of California